

THE WEAVER CASE

BY

HAMPTON L CARSON Esq

READ BEFORE THE MEDICAL JURISPRUDENCE SOCIETY MAY 1887

THE CASE OF JOHN DALEY

BY

JOHN B CHAPIN M D

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A SUMMARY OF THE WEAVER CASE.

BY HAMPTON L. CARSON, ESQ.

Read before the Medical Jurisprudence Society of Philadelphia.

The Weaver case has become famous, partly because, from the beginning, it constituted a local sensation, partly because the verdict of the jury was against the united and uncontradicted testimony of six experts in insanity, and the great weight of lay testimony; partly because the Commissioner formally dissented from the verdict, and thereby raised novel questions of practice; and lastly, because the Supreme Court, by its recent decision, reversed the action of the lower court in quashing the proceedings, reinstated the question finding the fact of insanity, and remitted the respondent, Dr. Weaver, to a traverse which will result in a trial before twelve jurors and one of the judges in the Common Pleas, to be again carried to the Supreme Court upon writ of error, after motions for a new trial have been disposed of in the lower court, before the question of Dr. Weaver's sanity or insanity can be finally determined. The facts were these: Upon the 16th of October, 1885, a nephew of Dr. Weaver's filed a petition, alleging that the said Martin Weaver now is, and for the last five years past and upward has been, so far deprived of his reason and understanding that he is rendered altogether unfit and unable to govern himself, that he has become altogether incapable of managing his estate and is wasting and destroying the same.

The particular type of the insanity from which it was alleged that the Doctor was suffering was not stated in the petition; but the general allegation was made that his mental unsoundness unfitted him for the proper care and management of his business and his estate.

This allegation, general though it was, raised the exact question which the Supreme Court of our State has said is the proper inquiry under the Acts of Assembly regulating proceedings in lunacy. The sole question to be determined is whether the mind is deranged to such an extent as to disqualify the respondent from conducting himself with personal safety to himself and others, and from managing and disposing of his own affairs and discharging his relative duties.

The Commissioner instructed the Sheriff's

jury that, in order to find the respondent a man of unsound mind, it would not be necessary to be satisfied that he was either a hopeless idiot or imbecile, or that he was a sufferer from acute or violent mania; nor would they be justified in finding him insane, even if they felt convinced that he was a man of weak mind or eccentric conduct, provided they were satisfied that he had sufficient capacity to manage his property and take care of himself. That the sole question before them was whether Dr. Weaver possessed sufficient mental capacity to manage his estate and take care of himself. The jury were also instructed that in medicine, insanity meant an established and prolonged departure of an individual from his natural mental condition, arising from bodily disease, and that insanity at law meant a permanently disordered state of mind beyond the control of the individual and produced by disease.

The jury were told that law and medicine united in declaring it to be a rule for the conduct of investigations into the state of a man's mind, that he must be measured by a standard furnished by himself in his ordinary daily existence, and that therefore they were to inquire whether in the conduct, behavior, action, speech and manner of Dr. Weaver, as testified to by the witnesses, there was a prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to him when in ordinary health. The jury were also instructed to inquire whether Dr. Weaver did any of the acts, alleged to be insane acts, under the control and influence of some firmly fixed and incorrigible delusion in relation either to a person or a thing which had no basis in point of fact, but which was solely the creation of his own morbid fancy. They were also told that the presumption of the law was in favor of sanity, and that the burden of proving insanity was upon the person alleging it; that until a permanent disorder of mind was proved to exist, no presumption of insanity could arise merely from the sudden and motiveless, the depraved or the self-injurious nature of acts committed; that all such acts were within the sphere of entire moral liberty, and sanity being the



normal condition of the human mind was favored by the general presumption of law. The jury were also told that a man had the unfettered right to direct by will what disposition should be made of his property after his death, or he could dispose of his property by deed in his lifetime as he saw fit; that no right of the citizen was more highly valued than the power to dispose of his own property at his sovereign will and pleasure; that no right is more solemnly assured to him by law; that it is guaranteed to him by the Constitution and the decisions of the Courts. The right does not depend in any sense upon the judicious exercise of it, and that it rarely happened that a man disposed of his estate to the entire satisfaction of either his family or his friends. That not until the conduct of a man became a menace to himself or others and involved the interests of himself and family, considered as the wards of society, will the law interpose to restrain his freedom of person, or his freedom of action in regard to his property. The jury were also told that they must be satisfied beyond a reasonable doubt that Dr. Weaver either did not know what he was doing at the time he executed the deed conveying the property, or that he was not a free agent at that time. With these instructions as to the nature and limits of the inquiry, the evidence was submitted to the jury.

The evidence grouped itself about a few considerations, such as these: First, the control exercised by Miss Emerson (now his wife) over Dr. Weaver; second, Dr. Weaver's lack of affection for his first wife and children; third, his habits, style of dress, conversation, personal appearance, behavior and mode of living; hereditary taint in the blood; delusions; business dealings and business capacity, and finally, the acts immediately surrounding and attending the execution of the deed by which Miss Emerson became the trustee, and in a great part the beneficiary, of Dr. Weaver's estate.

Upon the first of these—the alleged control exercised over Dr. Weaver by Miss Emerson—there was the testimony of the Doctor's daughter to numerous changes of residence forced upon the Doctor during a comparatively brief period of time; the locking up of her father in the closet when any one called at the house; the arrangement that he should not come to the door except upon a given signal at

the bell; the restriction of his walks to the back roads; his inability to rent his properties without Miss Emerson's consent; the fact that she collected the rents, paid the bills, and handled his money; his demonstrations of affection toward her, and the intimate footing between them, which permitted her to enter his bedroom at midnight or to lie on his bed by day; the Doctor's preference for Miss Emerson to his daughter; his reference to Miss Emerson of the question as to whether Bessie should return to the house after he had told her to clear out; her subsequent arrest and detention in the station house; her return to her father's house, and the next morning being taken by Miss Emerson to the Rosine Home, and his neglect to bid her good-bye. All of which acts the witness attributed to Miss Emerson, who was obeyed by Dr. Weaver as a child; and, finally, Miss Emerson's presence at the signing of the deed, which was executed at the school house at which she was a teacher. There was also evidence of witnesses who saw Miss Emerson in the Doctor's company, who transacted the Doctor's business with her, or who received the Doctor's money from her hands. On cross-examination Miss Weaver testified that on one occasion she herself held the key for some hours after her father had been locked in the closet. In connection with the matter of Miss Emerson's control, the Doctor's nephew and his sister-in-law testified that he was headstrong, violent, bent on having his own way; that in the lifetime of his wife the wife could not control him; that he generally did as he pleased, and had his own way because he wouldn't be controlled.

As to the second point—Dr. Weaver's lack of affection for his wife and children—it was testified that he was unkind to his daughter, and had told her, when she complained to him of keeping a strange woman in the house, "You can go; go along with you; clear out;" that he failed to provide her with clothing, and that what she had was cheap and of poor material. It was also in evidence that Dr. Weaver put his children in a pen to keep them out of the street; that the children were put in a room with straw on the floor, a stove in it, and a fence around the stove; that he was indifferent to his wife in her last illness, getting into bed with his clothes on beside his wife as she lay dying; that he refused to allow her to

have flowers in her room, although she wished it; that he brought an undertaker to see her before she was dead; that he neglected his child, who died in the midst of filth and vermin a year after the death of the mother; that he was cruel to his child, seizing it by the hair and throwing it on the floor, and was rough to his wife on the cars, shaking his fist at her and shaking her.

Upon the matter of his habits, style of dress, conversation, personal appearance, behavior and mode of living, it was testified that he was dirty and shabby, wore old clothes, an old battered high hat, a bandanna handkerchief for a neckcloth; wiped his hands, after cleaning fish and chickens, on his coat; had his clothes selected for him by his sisters; talked in a rambling fashion; mumbled to himself; laughed in monosyllables; said, "Yes, yes, yes; no, no, no," when questions were asked; was nervous and excited; restless; was unable to sit still; picked things up and put them down; ran in and out of the room; got furiously angry and chattered with rage; looked wild and fierce; that his hair stood up; that he preached on the front door steps and in the garden among the trees; that he talked to himself; went into the street on several occasions with no clothing on but a wrapper and slippers; went to a fire with his shirt outside of his pantaloons; that he marched with the Salvation army; that he played hide and whoop with his wife with the bedquilt around her; that they caught and rolled one another over and over; that he refused to keep servants to help his wife; that he cooked his own food and let his wife stand at the washtub when she was sick; when his sister died, he said, "Liz is dead, Liz is dead; hurrah! I am a free man; I can now get married again," and seemed in high glee; that he threw his hat at roosters when they crowed; chased a cat and threatened to kill it; chased boys down the street, who called him, "Crazy old Dr. Weaver," brandishing a coal scuttle and a stick; that he hammered on the curbstone trying to straighten a spike that was not crooked; that he behaved strangely at church while hymns were sung, and was eccentric and peculiar. The acts testified to covered a long period of years, and many witnesses on both sides said that he had always acted in this way, was always eccentric and peculiar and had always been so for fifty years; that he was high

tempered, close, and sharp at a bargain; that his wife and he both drank and often got drunk together; that his hair was naturally bushy and that he wore it long.

Upon the matter of the hereditary taint in the blood, the evidence was slight. The nephew of the Doctor stated that the Doctor's father died insane, and had been so for more than a year before his death, and that the Doctor's mother died of apoplexy. The character and symptoms of insanity were not stated. It was also testified that one of the Doctor's nephews had died out of his mind from a cancer in his face, which had eaten into the brain. The only other evidence upon the point was that of one of the physicians who admitted that he had said that he didn't consider the Doctor's daughter as bright mentally as she might be; but he denied having said, "Why, what else could you expect from a child of Dr. Weaver?"

Upon the question of the Doctor's delusions the evidence was also slight. The Doctor's sister-in-law testified at one of the interviews she had with him, he all at once looked up and said, "Do you remember when George (he is my husband's brother) got into the third story window and robbed the house?" She said, "I don't know what you mean," and he said, "Don't you remember it?" She said, "You don't know him; you never saw him; he never was in Germantown or at your house; he died before you saw him." He insisted that it was so. Another witness said that the Doctor had asked her whether she had ever seen a lady up in the front of the house dressed in a silk dress, and said, "That is one of my relations; she is there." The witness said, "No, sir; I do not believe in ghosts." There was no lady there.

Upon the capacity of Dr. Weaver to manage himself and take care of his estate, the testimony of several witnesses was that he was of unsound mind; that he was so in 1884; that it had been growing on him. The daughter did not express an opinion on her father's business capacity. The nephew, who started the proceedings, testified that he thought he was of unsound mind, but on cross-examination said that Dr. Weaver first became insane since his wife's death in 1877; that prior to that time he was a fool; that he was partially insane before that for thirty years; and that at no time since did he

recollect him as being perfectly sane. He was not asked for, nor did he express, an opinion upon his capacity to manage his estate, while he admitted, on cross-examination, that in the settlement of the witnesses' grandfather's estate, in which he had represented his mother, who was entitled to a share amounting to a one-quarter interest, she got \$6000 from Martin Weaver, and a deed from Martin Weaver conveying a part of the property to her, and that he had no hesitation in taking a crazy man's deed for his mother, nor in taking his money; that the settlement had been attended to by two well-known lawyers. He also testified that it was twenty-one years before Dr. Weaver filed an account in this estate, and that he did so only upon compulsion. He alleged that Dr. Weaver, as executor, had mismanaged property, and had illegally sued a tenant, who subsequently recovered damages. The Doctor's sister-in-law stated that she had had no business transactions with him, and that in her opinion he was of unsound mind; that his actions would lead her to suppose that he was not fit to manage his estate. Another witness said she did not believe that he was sane, and that she thought he was incapable of doing any kind of business. On cross-examination she admitted that she had rented a house from Dr. Weaver, and did not object to paying him rent or to taking his receipts; that she then owed him rent which she did not expect to pay. The Doctor's brother-in-law testified that he was a man of unsound mind; that he was of the opinion that he had been insane ever since he first saw him, which was shortly after his marriage, in 1865. This witness testified that he had had a walk with the Doctor through his orchard in 1872, and had been shown where they were building on the south of his land; that the Doctor talked about building some houses himself and about cutting streets through, and said, "Are you a builder? There might be a job for you." That the Doctor, when the witness asked him about the size of the building he thought of erecting, immediately turned the subject and called attention to some large trees which he talked about having transplanted. Another witness testified that he had regarded the Doctor as a man of unsound mind for more than twenty years; that he would not want to have any dealings with him that would call for business judgment, as he did not think him competent. On cross-

examination he admitted that he had never had any business transactions with him. The next witness, who was a tenant of the Doctor's, declared that she believed him to be an insane man and incompetent to take care of himself, his child, or his estate. On cross-examination she admitted that she had paid him rent, and had taken receipts from him without objection; that the Doctor was quite punctual in the collection of his rent, but would sometimes let it run over, or sometimes ask for it in advance. Another witness testified that the Doctor's sisters purchased material for his clothing, selected it for him and paid for it; that the Doctor was a man of no judgment and incapable of taking care of himself or his estate. On cross-examination he admitted that he took a part in the selection of his clothes, and that he would say, "That will do," or "That will not do." The next witness stated that he thought that the man, "by a stronger mind than his own, could be imposed upon; whether you make that out sanity or insanity; you may call it what you please." He declined to express an opinion on his business capacity, never having met him in business matters. On cross-examination he said that he had no hesitation in accepting the Doctor as a tenant or in making a bargain with him; that he lived up to it promptly and punctually; that he always thought him a highly respectable gentleman, honest and straightforward, and that he always lived up to his religion. The next witness had known the Doctor from boyhood; that when sick he had sent for the Doctor, who approved of the dose of laudanum and camphor which he had taken; ordered him to repeat the dose and prescribed some stiff toddy; that he had yielded his own judgment, as to the propriety of being bled, to the Doctor's judgment. When asked whether he was sane or insane, he replied, "He is a very eccentric man. I wouldn't like to say that he was insane, but he is very eccentric." And in reply to the question, "Do you think he is capable of attending to business?" said, "Well, I do not know. I cannot answer that." The last witness was a conveyancer and real estate agent, and formerly a magistrate, who had known the Doctor for many years. He said that he had always thought him peculiar and eccentric, more of late years than formerly; that he had had business transactions with him, and had been requested to sell some of his real estate; that a price had been fixed and the

customers secured; and that while the agreement was being prepared, he came into the office greatly excited, with no hat on and his hair flying about, and said, "Stop it, stop it; Eliza won't let me;" that he then went off and was not seen for some time, and that the witness ascertained upon inquiry that Eliza had not objected. That the Doctor wanted to open a street which would be of decided advantage to him, because it opened up some of his back ground, but that he could not be made to see the disadvantage to his neighbor. He also testified to the Doctor having instituted proceedings before himself as a magistrate, which he subsequently neglected to prosecute. This witness said that Dr. Weaver was not an idiot or insane man, but was a lunatic or crazy man, and one to whom he would not be willing to entrust any business. He defined the distinction which he drew, as follows: "The insane man is not capable of taking care of himself at all, and has to be confined. The idiot is one that has no mind at all, a mere child in point of intellect. A lunatic is one that is not capable of forming, or that has no judgment, and might be influenced to his own injury, and deserves to have some one appointed to take care of his estate; and a crazy man is a lunatic to a certain extent." On cross-examination he said that he thought the Doctor was very sharp at a bargain; that he had many eccentricities and that he held his real estate, as the witness thought, at rather too high a price. It was before this witness, as a magistrate, that the Doctor instituted legal proceedings, and he also took without objection Dr. Weaver's acknowledgment to a deed.

A deed of trust was then offered, in evidence of an insane act on the part of Dr. Weaver, between himself and Miss Emerson (now his wife) dated September 30th, 1884, and duly recorded, which, after making a provision of five hundred dollars a year for his daughter, conveyed the bulk of the estate to Miss Emerson. It was also shown that the daughter was sole heir at law and that the property owned by the Doctor amounted to the sum of \$41,216.66.

This closed the case for the Commonwealth.

For the defence, twenty-nine witnesses were called.

The evidence related to three principal matters—the ability of Dr. Weaver to manage his own business; his eccentricities and the period of their duration; and the scientific inter-

pretation of these facts. Upon the question of his business capacity, four distinct classes of witnesses were called—business men, who had had business relations with him; clergymen who had known him in their parishes; lawyers who had attended to his legal business; and physicians who are also experts in insanity.

Of the first class, a carpenter and builder who had known the Doctor for fifty years and had had considerable business with him, had attended to the payment of his taxes, had done curbing and paving for him, had repaired his houses and for a time had some of them in charge, testified that he thought that the Doctor was eccentric and singular, but was able to take care of himself and business quite as well as the witness could attend to his. That he considered him sane, and that he had retained his physical and mental strength remarkably well for an old man; that he thought he held his properties rather high; that his eccentricities were the same now as fifty years ago, and that his singularity had nothing whatever to do with his capacity to take care of himself or his property. To the same effect was the testimony of a son of the preceding witness, who had aided his father in the transaction of Dr. Weaver's business. He had always thought him able to take care of himself and able to make contracts; he had had a talk with him about building a house, and thought him very cautious; he had never any doubt as to his ability to take care of his property and himself, and never had any doubt of his sanity. The next witness was a coal merchant who had sold him coal and had frequently talked to him; he judged him to be a sane man. The only business transactions between the parties was the sale of coal, for which the Doctor sometimes paid in person. The next witness was the brother of one of the witnesses for the Commonwealth, who testified that he had no doubt of his sanity, but looked upon Dr. Weaver as an unusually intelligent man for one of his years.

The next witness, a real estate agent and a member of the bar, had had business transactions with the Doctor about 1876, about renting a property; it never had occurred to him that the Doctor was not entirely able to take care of himself or his estate. The next witness had boarded with the Doctor for a year or so, from the spring of 1879, and had never

questioned his sanity; said that he found him reading the Greek testament in the evening; considered him an intelligent man, capable of taking care of himself, and at times a little shrewd at a bargain.

To the same effect was the testimony of a miller who had known the Doctor for 30 years, and intimately for the last 17; he had never had any business transactions with him, but had frequently met him at the Young Men's Christian Association and also at church. To the same effect was the testimony of a man who had worked for the Doctor prior to '62, though he had met him frequently after '66. Then came a member of the Bar and an ex-Sheriff of the County, who had purchased a property from the Doctor, had taken his deed without hesitation, and had paid him \$7000. Another man, a printer, had bought a piece of ground from the Doctor 10 or 12 years ago; paid part cash and left part upon the ground, and twice a year had to see the Doctor to pay him ground rent; about five or six years ago he paid the rent off; since then, within about four or five months, he had gone to see him about buying another piece of ground but did not purchase it, as the Doctor's price was too high; he thought him a very sharp, shrewd man and a very sane one; that he was able to take care of himself in business transactions, more so than a good many men of 35 years of age. Three clergymen, who had known him in '82, '83, and in the winter of '79 and since, declared that he was perfectly sane. Four well-known members of the bar, who attended to the Doctor's professional business, testified that he was perfectly sane, and that in all their dealings with him, though they thought him eccentric, deemed him perfectly able to take care of himself and his estate. Doctors D. Hayes Agnew, Thomas G. Morton, Charles K. Mills, Henry D. Wetherill, John C. Hall, John B. Chapin and Dr. Landis, his private physician, all testified that they had carefully examined him, conversed with him upon several occasions and that they thought him mentally sound. Testimony was then offered in relation to the circumstances attending the execution of the deed of trust. The account was given by the professional gentleman who prepared it, who said that the Doctor had consulted him about the disposition of his property, and told him that certain of his family had threatened to attack any paper by which he might

dispose of his property on the ground that he was insane, and that he wished the attack to be made in his lifetime while he could be examined by competent physicians. He said that his family had treated him so badly that he did not propose to leave any of his property to them; that he wanted to leave it to Miss Emerson, who had been a faithful and devoted friend for many years, subject to an annuity payable to his daughter. He mentioned the sum of \$500 per annum, and said that he fixed that sum because she had not sufficient capacity to take care of money and that she was addicted to immorality. The deed was then prepared, taken to the Doctor's house, read over to him and executed and acknowledged in the presence of Dr. Landis, Miss Emerson, Miss Weaver, the Notary Public, and the attorney. The testimony of the attorney as to what took place at the time of the execution of the deed was corroborated by that of the physician and the Notary Public; both testified that they were fully satisfied that he fully understood the contents of the deed and was satisfied, and the Notary said, "I supposed or thought he was as sane as any man could be; if I had not thought so, I would not have taken his acknowledgment, of course." Several deeds from members of the family to Martin Weaver and from Martin Weaver to members of the family, to one of which the petitioner in these proceedings was a witness, the deed being dated February 12th, 1884, and to another of which another one of the witnesses for the Commonwealth had acted as Notary Public, in taking the acknowledgment, were offered in evidence.

The only evidence in rebuttal was that of the petitioner, who stated that the first time he ever mentioned to anybody that he thought Dr. Weaver was insane was about two years ago, but he did not remember to whom it was or whether it was to more than one person. There was no rebuttal expert testimony.

The Commissioner and the jury visited the Doctor at his own house early one morning, without having given him notice of the intended visit, and held a conversation with him for more than half an hour.

The jury found that the said Martin Weaver is, at the time of taking this inquisition, a lunatic, and has been so for three years and upward, with lucid intervals, but of such short duration as to render him incapable of taking

care of his property and estate; and at the time of the execution of the deed of trust, dated September 30th, 1884, he was not in the enjoyment of a lucid interval, and that at the time of his becoming a lunatic he was seized and possessed of certain lands and tenements, goods and chattels, valued at the net valuation of \$41,216.67; and that the said Martin Weaver has since disposed of his lands and tenements, goods and chattels, by a deed of trust, dated September 30th, 1884, duly recorded, excepting therefrom an annuity of \$500 to his daughter for life; that the said Martin Weaver is of the age of 81 years or thereabouts; and that his wife, with whom he has intermarried since the commencement of the proceedings, of the age of 35 years, and his daughter, a minor, of the age of 18 years, are the heirs and next of kin of the said Martin Weaver.

The Commissioner did not agree with the conclusions reached by the jury, and expressed his dissent in the following words: "The Commissioner feels himself obliged to disagree with the conclusion reached by the jury in finding the said Martin Weaver to be a lunatic. The evidence satisfied him that the said Martin Weaver has been eccentric all his life, but has never undergone any marked change of character during the past fifty or sixty years; that instead of wasting and mismanaging his estate, he is unusually close, cautious and penurious; and your Commissioner was satisfied from the interview held by him with the said Martin Weaver, in the presence of the jury, that there was not the slightest trace of insanity in either his speech or conduct; that he is able to converse upon a great variety of subjects—medicine, history, theology, classical literature and the ordinary topics of the day—with intelligence, sound sense and remarkable strength of memory for a man 81 years of age; and that his memory appeared to be as good with regard to recent events as to those many years old in point of time. Your Commissioner was also satisfied from the evidence that on the day of the execution of the deed to Emilie J. Emerson, dated September 30th, 1884, he fully understood what he was doing, knew all about his property, remembered the objects of his bounty and gave intelligent reasons for his action."

As the law then stood in Pennsylvania, there was no decision of any court that a Commissioner in Lunacy formed no part of the tribunal

charged with the duty of making the preliminary inquiry into a man's mental condition, or that he had no right to express his views upon the evidence. He was obliged to certify to the inquisition and to affix his hand and seal to it, together with the jurors. Holding views so diametrically opposed to those of the jurors, he did not desire that his signature and seal should be misinterpreted into acquiescence with the result, and he argued to himself that if he had no such right in law, as forming no part of the tribunal to determine the question of fact, then his dissent could not affect the integrity of the verdict, as it could be readily expunged from the record; but that if he had such a right, then he preferred not to forego his opportunity of expressing his real views. The Court below reviewed the testimony, and being of the same opinion with the Commissioner, set the inquisition aside. A certiorari removed the record to the Supreme Court, and that Court, in an opinion delivered upon the 2d of May, 1887, reversed the action of the lower Court, reinstated the inquisition, and remitted the record for further proceedings, holding that in a proceeding *de lunatico inquirendo* the Court of Common Pleas cannot set aside an inquisition finding the fact of lunacy, upon the ground that the evidence is insufficient to sustain the finding. The only method to contest the validity of the inquisition on the question of the fact of lunacy is by a traverse and trial by jury. The Court declared that it was singular that there was such a dearth of authority upon this question, and declared that in Pennsylvania the absence of authority was doubtless due to the fact that the uniform practice had been to contest the finding of the inquest upon the merits by means of a traverse, as provided in the Acts of Assembly, which they held to be conclusive of the subject. They further held that the Acts of Assembly gave the whole power to the jurors sitting upon the inquest to determine the fact of lunacy, and while the Commissioner may differ in opinion upon the facts in question from the jury, he has no power to participate in the finding, and hence his opinion can in no manner control the finding of the inquest. And so, it was apprehended, as to the further proceedings to impeach the findings of the inquest upon the controverted facts, they must consist of a traverse and a jury trial. To allow the Court to review the testimony taken

before the inquest and decide upon its merits, is practically to supersede the traverse which is the remedy provided by law. It was also held that the testimony formed no part of the record and should not have been returned to the Court or reviewed by it. It must be borne in mind, therefore, that the decision of the Supreme Court does not touch the question of Dr. Weaver's sanity or insanity. The testimony was not carried to the Supreme Court, and they held that the lower Court ought not to have looked at it.

The decision turns simply upon the technical point as to the method of proceeding in order to contest the truth of an inquest finding a man to be insane. The effect, therefore, is to remit Dr. Weaver to the position of having been found a lunatic by a Sheriff's jury of six, and the only way in which he can have that finding of fact reviewed is to traverse the inquest, go to trial before a jury of twelve and one of the Judges of the Court of Common Pleas, where either party, petitioner or respondent, may, if dissatisfied with the result of the trial, that is, with the verdict of the jury of twelve, make a motion for a new trial, and, if this be refused, carry the case together with all the testimony, by Bill of Exceptions, to the Supreme Court for final adjudication. Not until these proceedings have been taken and carried to the end, can it be asserted that the Supreme Court has decided Dr. Weaver to be either sane or insane. Upon the testimony, when it finally reaches the eyes of our judges of the court of last resort, it is quite confidently predicted that they will agree with the Court below in its view of the case when reviewing the testimony, unless, indeed, a jury of twelve should find him to be sane, the Court below refuse to grant a new trial, and the Supreme Court affirm that action. To make the matter plain to popular apprehension, we would compare the proceeding by inquisition before a Sheriff's jury to a presentation of a bill to the Grand Jury, which, though it may find a true bill, by no means determines the guilt of the indicted person, who may upon his trial before a petit jury prove his innocence and secure a verdict of acquittal. It, therefore, by no means follows, because a Sheriff's jury finds a man to be insane, that he necessarily is so. In fact, miserable would be the condition of the man in such a position, if such were to be the case, for it has become a noticeable fact in Pennsylvania that almost all inquests, with

exceptions so rare that no one's memory can recall them, have found men to be insane; whether the proceedings have been set on foot to rescue an estate from reckless dissipation, the result of incapacity and mismanagement, or for the purpose of gratifying the disappointed hopes of some injured relative who fancies that a man ought to dispose of his estate in a manner satisfactory to his critic; while, at the same time, the provisions of the law in relation to costs, which are thrown upon the estate of the lunatic so alleged, present too great a temptation to a careless consideration of the testimony by those who are too often led to believe that mere eccentricity of conduct is conclusive evidence of insanity, and that medical experts, even when uncontradicted and harmonious among themselves, have little or no knowledge of what they are talking about. The case will always be a landmark in our law, and conclusive upon the point of practice involved, unless, indeed, the Legislature should see fit to alter it. A different result was arrived at in the State of New Jersey in *Perrine's Estate*, 4 Central Reporter, p. 62, where the facts were almost identical with the case under consideration. The inquisition, as returned to the Court, found that the alleged lunatic was of sound mind. The Commissioner certified that she was not fit to transact business. Application was made to set aside the inquisition, on the ground that the finding was contrary to the evidence, and the Chancellor held, that though the jury found that Miss Perrine was of sound mind and capable of controlling her property, yet the Commissioner certifying that she was incapable of understanding any matter of business, he set aside the inquisition. It was believed that the Court of Common Pleas in lunacy proceedings acted as a Court of Chancery under the well-settled idea that lunatics were the wards of the crown, and that a chancellor, who was the keeper of the conscience of the king, though he might refer a question of fact to a jury for determination, was not bound by their verdict, and could set it aside and do as to conscience and equity seemed right. But whatever theoretic views might have been entertained upon this subject, they are all set at rest by the decision of the Supreme Court, which, until departed from by some subsequent ruling, or changed in effect by some act of the Legislature, remains the law of the State, and to this all good citizens must bow.

THE CASE OF JOHN DALEY,

INDICTED FOR MURDER AND ACQUITTED ON THE PLEA OF INSANITY.

BY JOHN B. CHAPIN, M. D.

Reported to the Medical Jurisprudence Society.

The case of John Daley, indicted for murder and acquitted on the plea of insanity, is a very interesting one in some respects, and I will ask your indulgence in making the verbal report of it.

On the 14th of July, 1887, Mr. Kennedy, a resident of the city of Washington, a dealer in real estate, left his office in the afternoon about five o'clock, and proceeded toward his home. On reaching a tree standing near the walk, a man was noticed to approach him and touch him upon the shoulder, and upon his turning around he plunged a knife into Mr. Kennedy. Kennedy sank to the pavement, and died in a few moments; the cause of his death being hemorrhage.

John Daley was arrested, and when asked why he had committed the deed, he said, "Wait, it will come out in the trial." He was placed in the district jail, and in due course of time indicted for homicide.

In the month of October I was asked to join Dr. W. W. Godding, Physician of the Government Asylum for the Insane, in making an examination of Daley, and to submit a report, upon which the government would then decide whether to try him or to take further proceedings.

On the 23d and 26th of October, we passed perhaps eight hours in conversation with Daley in the jail. He freely communicated his history, which was fully confirmed on the trial. He stated that in 1857 he left Smyrna, Delaware, where he had been engaged in making coaches and wagons as an apprentice, and went to the city of Washington, where he remained until the year 1875. During this time he accumulated small sums of money as a porter about the public buildings, portions of which he paid over to his father, who paid these sums, as also other sums which he had himself earned, to Mr. Kennedy for the purchase of a piece of property, a small lot.

He seems to have come to Philadelphia in 1875, and thence to have gone to the Falls of Schuylkill, where he was engaged in one of the manufacturing establishments in that place.

The business suspending, he went to seek service with the Roman Catholic Brotherhood, known as the Society of St. Vincent de Paul, in Germantown. He entered as a lay brother, promising to render certain services in return for his board, and was placed in charge of the greenhouses and to watch the fires. One night he fell asleep, and awoke in a chill, seemed to be cold, and had oppression of breathing. He applied to the head of the establishment, who procured a prescription from the physician of the institution—I think he stated to me that his name was Dr. Winstine. Dr. Winstine seems to have made some prescription for him, and that seems to have been the foundation of a great portion of his imaginary trouble afterward. This medicine, he alleged, produced a gummy exudation and disturbed his bowels, so that his digestive organs were very much disarranged and "dried up." He, however, remained in the service of this Society until 1878, when he went to Washington on account of his step-mother's death. He placed his father in a charitable hospital for care, and returned again to Germantown. He remained in Germantown until 1882, when his father died, and he went on to Washington to look after the estate, or the supposed estate. On reaching Washington he was informed by Mr. Kennedy, who seems to have transacted a good deal of the business, that there was no portion of the estate coming to him—that the avails of it had been used in burying his father, paying taxes and various expenses.

He then boarded at one place and another, changing his boarding-house frequently, alleging that detectives were pursuing him. These detectives were persons who were called "Members of the Order." He fixed upon a number of persons whom, by their appearance, he regarded as suspicious persons. He changed his residence probably five or six times, consuming, gradually, the balance of his savings, as he ceased to earn any money after 1882, until he found that he had but about ten dollars in money left. This sum of money he expended partly

in purchasing some clothing, and the purchase of a pistol for the purpose of shooting a Dr. Elliot, whom he alleged was one of the "Detectives of the Order."

Not meeting with Dr. Elliot, he finally sold his pistol for a small sum, which he expended in lodging, and was left entirely destitute and fell sick. He then applied to the police headquarters, and was furnished with an order for admission to the district hospital. He was at the hospital for two weeks, and then asked for a pass to go into the city to procure clothes. While walking along the city drives about one of the squares, he saw Dr. Elliot in his carriage, and followed him. He went to the Capitol and entered, procured a large stone, and placed it in his pocket. He went into the Senate Chamber, and then went to the door and waited until Dr. Elliot should come out. Elliot came out in a short time, and advanced toward his carriage. Daley followed him, and within four or five feet of him he hurled the stone at him with all his strength, and, describing the effort, he said he meant to kill him. The stone did not strike Dr. Elliot, and passed near his head. Daley rushed upon him, threw him down, and used his fists upon him. He was arrested and taken to the office of the Chief of Police, where Dr. Elliot made a complaint of assault against him, and he was sent to the district jail for ninety days. Dr. Elliot did not know the man, and no examination of his mental condition was made.

After serving out his time he was transferred to the Almshouse. Soon after entering the Almshouse, he secreted one of the knives used in the dining-room—an ordinary case knife—which he ground to a fine point, and sharpened it on both sides. That knife he carried in his pantaloons or his stocking, but never carried it in his pocket. This was probably six months before the commission of the homicide.

After spending several months at the Almshouse he was discharged, the physician stating that there was nothing the matter with him, and he must go. He went at once to the city and took the position near the tree, and awaited the coming of Mr. Kennedy, as was alleged by the prosecution, but, as he alleged himself, he still intended to pursue and find Dr. Elliot.

On further conversation with him he stated that he had entertained the delusion about the "detectives of the Order" from the year 1878.

He stated that he knew the difference between right and wrong; that he had been carefully educated, and had been instructed according to his religion. He also stated that he had no delusions about Mr. Kennedy, and we failed to find any indication of any delusive idea associated with him.

He said he intended to kill him when he saw him, for the reason (to use his own language) "he had beaten me in this money transaction."

In submitting a report, we embodied this history, and the conclusions, which, as they were very brief, I will read as they were presented:—

"As conclusions, we find and are of the opinion:—

"1st. That John Daley, the prisoner, was insane on the day he committed the homicide.

"2d. That we have been unable to connect the homicide with any delusion that he held at the time, but are of the opinion that, in consequence and resulting from the insanity, his self-control was to a considerable degree impaired, and he was liable, more than in his normal condition, to become the prey of sudden passion and frenzy.

"3d. That he is at the present time an insane and dangerous person, for the reason that he entertains the delusion that he has been drugged or poisoned, and that he is the constant object of surveillance by detectives and suspicious persons.

"4th. That, though an ignorant man, he is now up to such a mental standard, as compared with his former state, that he could comprehend the proceedings of a court or trial.

"5th. That his memory is unimpaired, and that no attempt to feign the condition we observed was made, neither did he seem to us to prevaricate."

The government decided to try the issues on or about the 6th of January, and the case was, I think, very fairly and fully tried. The jury, after an absence of about ten minutes, brought in a verdict of acquittal—I think very much to the surprise of both sides.

I have presented this case for two reasons: First, it has an interest in connection with that of Webber, recently tried in this city, which it much resembles. Both committed atrocious murders; both were insane prior to and at the time of the homicides, yet it did not appear

that the crimes had any direct connection with delusions entertained by either. Both crimes seemed to result from sudden passion and insufficient provocation, not an unusual history of crime. Both had a knowledge of right and wrong.

Daley said, in his own language, that he had killed Kennedy because he had cheated him in a money transaction, and Webber alleged he killed his victim because he "fired him out of the store."

John Daley had been confined in prison and at the Almshouse under circumstances that should have led to his committal as a lunatic, and the wife of Webber is reported to have endeavored to have him admitted to a hospital for the insane. No doubt can exist that in both cases physicians would have certified to the existence of insanity, and two valuable lives have thus been spared.

Both cases were properly referred to a jury to determine their criminal accountability for the commission of their acts. As human law is enacted partly for the protection of society, the question recurs, to what extent shall criminals who are conceded to be partially insane be excused from the consequences of acts which are only indirectly the outgrowth of mental disease? Also, does not conviction in these cases, rather than acquittal, and the subsequent exercise of mercy, if called for, exercise a wholesome deterrent influence over a large number of eccentric, partially insane persons, commonly called "cranks," who would otherwise commit some serious crime?

The final disposition of the two cases was quite different; Daley was acquitted, and Webber was convicted.

Second. The charge of Judge Montgomery, of the District Court, is so in accord with the existing state of medical knowledge and experience that, if not in accordance with present accepted legal doctrines, it will honor the intelligence and humanity of a succeeding age.

If not taxing your time too much, I will read the report of the charge as printed in one of the district papers:—

"Upon the positions of the prosecution and defense the judge charged as follows:—

"First. If the defendant was, at the time of the homicide, wholly incapacitated mentally—a madman, without intelligent or rational under-

standing, or in a condition of "frenzy or raving madness," I hardly need say he is not responsible for his acts.

"Again, I instruct you generally, that a defendant charged with murder is not to be held responsible when, at the time of the commission of the homicide, he was incapable of determining whether the act was right or wrong.

"The jury should consider the following questions: First, Was the defendant at the time of the act, as a matter of fact, afflicted with disease of the mind; was he wholly or partially insane?

"Second, If he was so afflicted, did he know right from wrong as applied to the homicide in question? If he did not have such knowledge, he is not legally responsible.

"Third, If he did have such knowledge, had he, by reason of the duress of such mental disease, so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed, and if so, was the homicide so connected with such mental disease in the relation of cause and effect as to have been a product of it (the mental disease) solely?

"If this be the fact, he is not legally responsible. If, by reason of the insane delusions which the defendant had been harboring, he had reached that condition of mind when the morbid impulse to kill became irresistible, and existed in such volume as to subjugate his intellect and will and render it impossible for him to do otherwise than to yield and do as he did, then he is not to be held accountable.

"On the contrary, if you are satisfied, from the evidence, that the defendant was not insane, either wholly or in part; that he had no mental affliction, or, if you are satisfied that even though he was to some extent afflicted mentally, he was to a degree mentally unsound; that he still had sufficient capacity to understand and did understand right from wrong, as applied to this act, and you are further satisfied that there has been no such duress, such stress of his mental disease as to render him powerless to choose, powerless to avoid doing the act, that his free agency was not destroyed; that the homicide was not the product of his mental infirmity (if he had any), then he should be held responsible and convicted as indicted."

The insane criminal was committed to the Government Hospital for the Insane.

